

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE AUGUST 12, 2013

AMENDED IN SENATE JULY 8, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 263

Introduced by Assembly Member Roger Hernández

February 7, 2013

An act to amend Sections 98.6, 98.7, 1102.5, and 1103 of, to add Section 1024.6 to, and to add Chapter 3.1 (commencing with Section 1019) to Part 3 of Division 2 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 263, as amended, Roger Hernández. Employment: retaliation: immigration-related practices.

Existing law prohibits an employer from discharging an employee or in any manner discriminating against any employee or applicant for employment because the employee or applicant has engaged in prescribed protected conduct relating to the enforcement of the employee's or applicant's rights. Existing law provides that an employee who made a bona fide complaint, and was consequently discharged or otherwise suffered an adverse action, is entitled to reinstatement and reimbursement for lost wages. Existing law makes it a misdemeanor for an employer to willfully refuse to reinstate or otherwise restore an

employee who is determined by a specified procedure to be eligible for reinstatement.

This bill would also prohibit an employer from retaliating or taking adverse action against any employee or applicant for employment because the employee or applicant has engaged in protected conduct. The bill would expand the protected conduct to include a written or oral complaint by an employee that he or she is owed unpaid wages. The bill would provide that an employee who was retaliated against or otherwise was subjected to an adverse action is entitled to reinstatement and reimbursement for lost wages. The bill would subject a person who violates these provisions to a civil penalty of up to \$10,000 per violation. The bill would also provide that it is not necessary to exhaust administrative remedies or procedures in the enforcement of *these specified* provisions. Because the willful refusal by an employer to reinstate or reimburse an employee who suffered a retaliatory action under these provisions would be a misdemeanor, the bill would expand the scope of a crime and impose a state-mandated local program.

Existing law declares that an individual who has applied for employment, or who is or has been employed in this state, is entitled to the protections, rights, and remedies available under state law, regardless of his or her immigration status. Existing law declares that an inquiry into a person's immigration status for purposes of enforcing state labor and employment laws shall not be permitted, unless a showing is made, by clear and convincing evidence, that the inquiry is necessary in order to comply with federal immigration law.

This bill would make it unlawful for an employer or any other person to engage in, or direct another person to engage in, an unfair immigration-related practice, as defined, against a person for the purpose of, or with the intent of, retaliating against any person for exercising a right protected under state labor and employment laws or under a local ordinance applicable to employees, as specified. The bill would also create a rebuttable presumption that an adverse action taken within 90 days of the exercising of a protected right is committed for the purpose of, or with the intent of, retaliation.

The bill would authorize a civil action by an employee or other person who is the subject of an unfair immigration-related practice. The bill would authorize a court to order the appropriate government agencies to suspend certain business licenses held by the violating party for prescribed periods based on the number of violations. The bill would

require the court to consider prescribed circumstances in determining whether a suspension of all licenses is appropriate.

Existing law prohibits an employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation. Existing law further prohibits an employer from retaliating against an employee for that disclosure. Under existing law, a violation of these provisions by the employer is a misdemeanor. Existing law additionally subjects an employer that is a corporation or a limited liability company to a civil penalty not exceeding \$10,000 for each violation of these provisions.

This bill would additionally prohibit any person acting on behalf of the employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, as provided, and from retaliating against an employee for such a disclosure. The bill would also expand the prohibited actions to include preventing an employee from, or retaliating against an employee for, providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry. The bill would provide that any person or entity that violates these provisions is guilty of a misdemeanor, and would further subject an entity that violates these provisions that is a corporation or limited liability company to a civil penalty not exceeding \$10,000 for each violation of these provisions. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law prohibits an employer or prospective employer, with the exception of certain financial institutions, from obtaining a consumer credit report, as defined, for employment purposes unless it is for a specified position, including, among others, a position in the state Department of Justice, a managerial position, as defined, or a position that involves regular access to \$10,000 or more of cash, as specified.

This bill would prohibit an employer from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against an employee because the employee updates or attempts to update his or her personal information, unless the changes are directly related to the skill set, qualifications, or knowledge required for the job.

This bill would incorporate additional changes to Section 1102.5 of the Labor Code proposed by SB 496 that would become operative if this bill and SB 496 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Wage theft is a serious and widespread problem that causes
- 4 severe hardship to low-wage workers, their families, and their
- 5 communities.
- 6 (b) When a worker is denied wages or forced to work “off the
- 7 clock,” there is an immediate and irreparable harm to the worker
- 8 and his or her family.
- 9 (c) Low-wage, often immigrant, workers are the most frequent
- 10 victims of wage theft and are also exposed to the greatest hazards
- 11 at work.
- 12 (d) Immigrant workers have the greatest number of work-related
- 13 injuries and fatalities.
- 14 (e) Far too often, when workers come forward to expose unfair,
- 15 unsafe, or illegal conditions, they face retaliation from the
- 16 employer.
- 17 (f) Where there are immigrant workers involved, employer
- 18 retaliation often involves threats to contact law enforcement
- 19 agencies, including immigration enforcement agencies, if a worker
- 20 engages in protected conduct.
- 21 (g) No employee should have to fear adverse action, whether it
- 22 involves threats to cut hours, move a worker to night shift, or
- 23 contact law enforcement agencies, simply for engaging in rights
- 24 the State of California has deemed so important that they are
- 25 protected by law.

1 (h) It is in the public policy interest of the State of California
2 that workers be able to report concerns to their employers without
3 fear of retaliation or discrimination.

4 (i) It is in the public policy interest of the State of California
5 for workers to be willing to come forward to expose hazardous,
6 unsafe, and unfair conditions at their worksites so that local, state,
7 and federal agencies can effectively enforce the laws.

8 (j) It is essential to the enforcement of this state's labor laws
9 that we have broad, clear, and effective protections for workers
10 engaging in conduct protected by law from all forms of employer
11 retaliation, including prohibiting immigration-related threats.

12 SEC. 2. Section 98.6 of the Labor Code is amended to read:

13 98.6. (a) A person shall not discharge an employee or in any
14 manner discriminate, retaliate, or take any adverse action against
15 any employee or applicant for employment because the employee
16 or applicant engaged in any conduct delineated in this chapter,
17 including the conduct described in subdivision (k) of Section 96,
18 and Chapter 5 (commencing with Section 1101) of Part 3 of
19 Division 2, or because the employee or applicant for employment
20 has filed a bona fide complaint or claim or instituted or caused to
21 be instituted any proceeding under or relating to his or her rights
22 that are under the jurisdiction of the Labor Commissioner, ~~or~~ made
23 a written or oral complaint that he or she is owed unpaid wages,
24 or because the employee has initiated any action or notice pursuant
25 to Section 2699, or has testified or is about to testify in a
26 proceeding pursuant to that section, or because of the exercise by
27 the employee or applicant for employment on behalf of himself,
28 herself, or others of any rights afforded him or her.

29 (b) (1) Any employee who is discharged, threatened with
30 discharge, demoted, suspended, retaliated against, subjected to an
31 adverse action, or in any other manner discriminated against in
32 the terms and conditions of his or her employment because the
33 employee engaged in any conduct delineated in this chapter,
34 including the conduct described in subdivision (k) of Section 96,
35 and Chapter 5 (commencing with Section 1101) of Part 3 of
36 Division 2, or because the employee has made a bona fide
37 complaint or claim to the division pursuant to this part, or because
38 the employee has initiated any action or notice pursuant to Section
39 2699 shall be entitled to reinstatement and reimbursement for lost
40 wages and work benefits caused by those acts of the employer.

1 (2) An employer who willfully refuses to hire, promote, or
2 otherwise restore an employee or former employee who has been
3 determined to be eligible for rehiring or promotion by a grievance
4 procedure, arbitration, or hearing authorized by law, is guilty of a
5 misdemeanor.

6 (3) In addition to other remedies available, an employer who
7 violates this section is liable for a civil penalty not exceeding ten
8 thousand dollars (\$10,000) per employee for each violation of this
9 section.

10 ~~(4) In the enforcement of this section, there is no requirement~~
11 ~~that an individual exhaust administrative remedies or procedures.~~

12 (c) (1) Any applicant for employment who is refused
13 employment, who is not selected for a training program leading
14 to employment, or who in any other manner is discriminated
15 against in the terms and conditions of any offer of employment
16 because the applicant engaged in any conduct delineated in this
17 chapter, including the conduct described in subdivision (k) of
18 Section 96, and Chapter 5 (commencing with Section 1101) of
19 Part 3 of Division 2, or because the applicant has made a bona fide
20 complaint or claim to the division pursuant to this part, or because
21 the employee has initiated any action or notice pursuant to Section
22 2699 shall be entitled to employment and reimbursement for lost
23 wages and work benefits caused by the acts of the prospective
24 employer.

25 (2) This subdivision shall not be construed to invalidate any
26 collective bargaining agreement that requires an applicant for a
27 position that is subject to the collective bargaining agreement to
28 sign a contract that protects either or both of the following as
29 specified in subparagraphs (A) and (B), nor shall this subdivision
30 be construed to invalidate any employer requirement of an
31 applicant for a position that is not subject to a collective bargaining
32 agreement to sign an employment contract that protects either or
33 both of the following:

34 (A) An employer against any conduct that is actually in direct
35 conflict with the essential enterprise-related interests of the
36 employer and where breach of that contract would actually
37 constitute a material and substantial disruption of the employer's
38 operation.

1 (B) A firefighter against any disease that is presumed to arise
2 in the course and scope of employment, by limiting his or her
3 consumption of tobacco products on and off the job.

4 (d) The provisions of this section creating new actions or
5 remedies that are effective on January 1, 2002, to employees or
6 applicants for employment do not apply to any state or local law
7 enforcement agency, any religious association or corporation
8 specified in subdivision (d) of Section 12926 of the Government
9 Code, except as provided in Section 12926.2 of the Government
10 Code, or any person described in Section 1070 of the Evidence
11 Code.

12 *SEC. 3. Section 98.7 of the Labor Code is amended to read:*

13 98.7. (a) Any person who believes that he or she has been
14 discharged or otherwise discriminated against in violation of any
15 law under the jurisdiction of the Labor Commissioner may file a
16 complaint with the division within six months after the occurrence
17 of the violation. The six-month period may be extended for good
18 cause. The complaint shall be investigated by a discrimination
19 complaint investigator in accordance with this section. The Labor
20 Commissioner shall establish procedures for the investigation of
21 discrimination complaints. A summary of the procedures shall be
22 provided to each complainant and respondent at the time of initial
23 contact. The Labor Commissioner shall inform complainants
24 charging a violation of Section 6310 or 6311, at the time of initial
25 contact, of his or her right to file a separate, concurrent complaint
26 with the United States Department of Labor within 30 days after
27 the occurrence of the violation.

28 (b) Each complaint of unlawful discharge or discrimination
29 shall be assigned to a discrimination complaint investigator who
30 shall prepare and submit a report to the Labor Commissioner based
31 on an investigation of the complaint. The Labor Commissioner
32 may designate the chief deputy or assistant Labor Commissioner
33 or the chief counsel to receive and review the reports. The
34 investigation shall include, where appropriate, interviews with the
35 complainant, respondent, and any witnesses who may have
36 information concerning the alleged violation, and a review of any
37 documents that may be relevant to the disposition of the complaint.
38 The identity of a witness shall remain confidential unless the
39 identification of the witness becomes necessary to proceed with
40 the investigation or to prosecute an action to enforce a

1 determination. The investigation report submitted to the Labor
2 Commissioner or designee shall include the statements and
3 documents obtained in the investigation, and the findings of the
4 investigator concerning whether a violation occurred. The Labor
5 Commissioner may hold an investigative hearing whenever the
6 Labor Commissioner determines, after review of the investigation
7 report, that a hearing is necessary to fully establish the facts. In
8 the hearing the investigation report shall be made a part of the
9 record and the complainant and respondent shall have the
10 opportunity to present further evidence. The Labor Commissioner
11 shall issue, serve, and enforce any necessary subpoenas.

12 (c) If the Labor Commissioner determines a violation has
13 occurred, he or she shall notify the complainant and respondent
14 and direct the respondent to cease and desist from the violation
15 and take any action deemed necessary to remedy the violation,
16 including, where appropriate, rehiring or reinstatement,
17 reimbursement of lost wages and interest thereon, payment of
18 reasonable attorney's fees associated with any hearing held by the
19 Labor Commissioner in investigating the complaint, and the posting
20 of notices to employees. If the respondent does not comply with
21 the order within 10 working days following notification of the
22 Labor Commissioner's determination, the Labor Commissioner
23 shall bring an action promptly in an appropriate court against the
24 respondent. If the Labor Commissioner fails to bring an action in
25 court promptly, the complainant may bring an action against the
26 Labor Commissioner in any appropriate court for a writ of mandate
27 to compel the Labor Commissioner to bring an action in court
28 against the respondent. If the complainant prevails in his or her
29 action for a writ, the court shall award the complainant court costs
30 and reasonable attorney's fees, notwithstanding any other law.
31 Regardless of any delay in bringing an action in court, the Labor
32 Commissioner shall not be divested of jurisdiction. In any action,
33 the court may permit the claimant to intervene as a party plaintiff
34 to the action and shall have jurisdiction, for cause shown, to restrain
35 the violation and to order all appropriate relief. Appropriate relief
36 includes, but is not limited to, rehiring or reinstatement of the
37 complainant, reimbursement of lost wages and interest thereon,
38 and any other compensation or equitable relief as is appropriate
39 under the circumstances of the case. The Labor Commissioner
40 shall petition the court for appropriate temporary relief or

1 restraining order unless he or she determines good cause exists for
2 not doing so.

3 (d) (1) If the Labor Commissioner determines no violation has
4 occurred, he or she shall notify the complainant and respondent
5 and shall dismiss the complaint. The Labor Commissioner may
6 direct the complainant to pay reasonable attorney's fees associated
7 with any hearing held by the Labor Commissioner if the Labor
8 Commissioner finds the complaint was frivolous, unreasonable,
9 groundless, and was brought in bad faith. The complainant may,
10 after notification of the Labor Commissioner's determination to
11 dismiss a complaint, bring an action in an appropriate court, which
12 shall have jurisdiction to determine whether a violation occurred,
13 and if so, to restrain the violation and order all appropriate relief
14 to remedy the violation. Appropriate relief includes, but is not
15 limited to, rehiring or reinstatement of the complainant,
16 reimbursement of lost wages and interest thereon, and other
17 compensation or equitable relief as is appropriate under the
18 circumstances of the case. When dismissing a complaint, the Labor
19 Commissioner shall advise the complainant of his or her right to
20 bring an action in an appropriate court if he or she disagrees with
21 the determination of the Labor Commissioner, and in the case of
22 an alleged violation of Section 6310 or 6311, to file a complaint
23 against the state program with the United States Department of
24 Labor.

25 (2) The filing of a timely complaint against the state program
26 with the United States Department of Labor shall stay the Labor
27 Commissioner's dismissal of the division complaint until the
28 United States Secretary of Labor makes a determination regarding
29 the alleged violation. Within 15 days of receipt of that
30 determination, the Labor Commissioner shall notify the parties
31 whether he or she will reopen the complaint filed with the division
32 or whether he or she will reaffirm the dismissal.

33 (e) The Labor Commissioner shall notify the complainant and
34 respondent of his or her determination under subdivision (c) or
35 paragraph (1) of subdivision (d), not later than 60 days after the
36 filing of the complaint. Determinations by the Labor Commissioner
37 under subdivision (c) or (d) may be appealed by the complainant
38 or respondent to the Director of Industrial Relations within 10 days
39 following notification of the Labor Commissioner's determination.
40 The appeal shall set forth specifically and in full detail the grounds

1 upon which the appealing party considers the Labor
2 Commissioner's determination to be unjust or unlawful, and every
3 issue to be considered by the director. The director may consider
4 any issue relating to the initial determination and may modify,
5 affirm, or reverse the Labor Commissioner's determination. The
6 director's determination shall be the determination of the Labor
7 Commissioner. The director shall notify the complainant and
8 respondent of his or her determination within 10 days of receipt
9 of the appeal.

10 (f) The rights and remedies provided by this section do not
11 preclude an employee from pursuing any other rights and remedies
12 under any other law.

13 (g) *In the enforcement of this section, there is no requirement*
14 *that an individual exhaust administrative remedies or procedures.*

15 ~~SEC. 3.~~

16 SEC. 4. Chapter 3.1 (commencing with Section 1019) is added
17 to Part 3 of Division 2 of the Labor Code, to read:

18
19 CHAPTER 3.1. UNFAIR IMMIGRATION-RELATED PRACTICES
20

21 1019. (a) It shall be unlawful for an employer or any other
22 person or entity to engage in, or to direct another person or entity
23 to engage in, unfair immigration-related practices against any
24 person for the purpose of, or with the intent of, retaliating against
25 any person for exercising any right protected under this code or
26 by any local ordinance applicable to employees. Exercising a right
27 protected by this code or local ordinance includes, but is not limited
28 to, the following:

29 (1) Filing a complaint or informing any person of an employer's
30 or other party's alleged violation of this code or local ordinance,
31 so long as the complaint or disclosure is made in good faith.

32 (2) Seeking information regarding whether an employer or other
33 party is in compliance with this code or local ordinance.

34 (3) Informing a person of his or her potential rights and remedies
35 under this code or local ordinance, and assisting him or her in
36 asserting those rights.

37 (b) (1) As used in this chapter, "unfair immigration-related
38 practice" means any of the following practices, when undertaken
39 for the retaliatory purposes prohibited by subdivision (a):

1 (A) Requesting more or different documents than are required
2 under Section 1324a(b) of Title 8 of the United States Code, or a
3 refusal to honor documents tendered pursuant to that section that
4 on their face reasonably appear to be genuine.

5 (B) Using the federal E-Verify system to check the employment
6 authorization status of a person at a time or in a manner not
7 required under Section 1324a(b) of Title 8 of the United States
8 Code, or not authorized under any memorandum of understanding
9 governing the use of the federal E-Verify system.

10 (C) Threatening to file or the filing of a false police report.

11 (D) Threatening to contact or contacting immigration authorities.

12 (2) “Unfair immigration-related practice” does not include
13 conduct undertaken at the express and specific direction or request
14 of the federal government.

15 (c) Engaging in an unfair immigration-related practice against
16 a person within 90 days of the person’s exercise of rights protected
17 under this code or local ordinance applicable to employees shall
18 raise a rebuttable presumption of having done so in retaliation for
19 the exercise of those rights.

20 (d) (1) An employee or other person who is the subject of an
21 unfair immigration-related practice prohibited by this section, or
22 a representative of that employee or person, may bring a civil
23 action for equitable relief and any damages or penalties, in
24 accordance with this section.

25 (2) Upon a finding by a court of applicable jurisdiction of a
26 violation this section:

27 (A) For a first violation, the court in its discretion, may order
28 the appropriate government agencies to suspend all licenses subject
29 to this chapter that are held by the violating party for a period of
30 up to 14 days. For the purposes of this paragraph, the licenses that
31 are subject to suspension are all licenses held by the violating party
32 specific to the business location or locations where the unfair
33 immigration-related practice occurred. In determining whether a
34 suspension of all licenses is appropriate, the court shall consider
35 whether the employer knowingly committed an unfair immigration
36 practice, the good faith efforts of the employer to resolve any
37 alleged unfair immigration related practice after receiving notice
38 of the violations, as well as the harm other employees of the
39 employer, *or employees of other employers on a multiemployer*
40 *jobsite*, will suffer as a result of the suspension of all licenses. On

1 receipt of the court's order and notwithstanding any other law, the
2 appropriate agencies shall suspend the licenses according to the
3 court's order.

4 (B) For a second violation, the court, in its discretion, may order
5 the appropriate government agencies to suspend all licenses that
6 are held by the violating party specific to the business location or
7 locations where the unfair immigration-related practice occurred,
8 for a period of up to 30 days. In determining whether a suspension
9 of all licenses is appropriate, the court shall consider whether the
10 employer knowingly committed an unfair immigration practice,
11 the good faith efforts of the employer to resolve any alleged unfair
12 immigration related practice after receiving notice of the violations,
13 as well as the harm other employees of the employer, *or employees*
14 *of other employers on a multiemployer jobsite*, will suffer as a
15 result of the suspension of all licenses. On receipt of the court's
16 order and notwithstanding any other law, the appropriate agencies
17 shall immediately suspend the licenses.

18 (C) For a third violation, or any violation thereafter, the court
19 , in its discretion, may order the appropriate government agencies
20 to suspend for a period of up to 90 days all licenses that are held
21 by the violating party specific to the business location or locations
22 where the unfair immigration-related practice occurred. In
23 determining whether a suspension of all licenses is appropriate,
24 the court shall consider whether the employer knowingly
25 committed an unfair immigration practice, the good faith efforts
26 of the employer to resolve any alleged unfair immigration related
27 practice after receiving notice of the violations, as well as the harm
28 other employees of the employer, *or employees of other employers*
29 *on a multiemployer jobsite*, will suffer as a result of the suspension
30 of all licenses. On receipt of the court's order and notwithstanding
31 any other law, the appropriate agencies shall immediately suspend
32 the licenses.

33 (3) An employee or other person who is the subject of an unfair
34 immigration-document practice prohibited by this section, and
35 who prevails in an action authorized by this section, shall recover
36 its reasonable attorney's fees and costs, including any expert
37 witness costs.

38 (e) As used in this chapter:

39 (1) "License" means any agency permit, certificate, approval,
40 registration, or charter that is required by law and that is issued by

1 any agency for the purposes of operating a business in this state.
2 “License” does not include a professional license.

3 (2) “Violation” means each incident when an unfair immigration
4 practice was committed, without reference to the number of
5 employees involved in the incident.

6 ~~1019.1. The provisions of this chapter are severable. If any~~
7 ~~provision of this chapter or its application is held invalid, that~~
8 ~~invalidity shall not affect other provisions or applications that can~~
9 ~~be given effect without the invalid provision or application.~~

10 ~~SEC. 4.~~

11 *SEC. 5.* Section 1024.6 is added to the Labor Code, to read:

12 1024.6. An employer may not discharge an employee or in any
13 manner discriminate, retaliate, or take any adverse action against
14 an employee because the employee updates or attempts to update
15 his or her personal information, unless the changes are directly
16 related to the skill set, qualifications, or knowledge required for
17 the job.

18 ~~SEC. 5.~~

19 *SEC. 6.* Section 1102.5 of the Labor Code is amended to read:

20 1102.5. (a) An employer, or any person acting on behalf of
21 the employer, shall not make, adopt, or enforce any rule, regulation,
22 or policy preventing an employee from disclosing information to
23 a government or law enforcement agency, or ~~for~~ *from* providing
24 information to, or testifying before, any public body conducting
25 an investigation, hearing, or inquiry, where the employee has
26 reasonable cause to believe that the information discloses a
27 violation of state or federal statute, or a violation *of* or
28 noncompliance with a state or federal rule or regulation.

29 (b) An employer, or any person acting on behalf of the employer,
30 shall not retaliate against an employee for disclosing information
31 to a government or law enforcement agency, or for providing
32 information to, or testifying before, any public body conducting
33 an investigation, hearing, or inquiry, where the employee has
34 reasonable cause to believe that the information discloses a
35 violation of state or federal statute, or a violation *of* or
36 noncompliance with a state or federal rule or regulation.

37 (c) An employer, or any person acting on behalf of the employer,
38 shall not retaliate against an employee for refusing to participate
39 in an activity that would result in a violation of state or federal

1 statute, or a violation *of* or noncompliance with a state or federal
2 rule or regulation.

3 (d) An employer, or any person acting on behalf of the employer,
4 shall not retaliate against an employee for having exercised his or
5 her rights under subdivision (a), (b), or (c) in any former
6 employment.

7 (e) A report made by an employee of a government agency to
8 his or her employer is a disclosure of information to a government
9 or law enforcement agency pursuant to subdivisions (a) and (b).

10 (f) In addition to other penalties, an employer that is a
11 corporation or limited liability company is liable for a civil penalty
12 not exceeding ten thousand dollars (\$10,000) for each violation
13 of this section.

14 (g) This section does not apply to rules, regulations, or policies
15 that implement, or to actions by employers against employees who
16 violate, the confidentiality of the lawyer-client privilege of Article
17 3 (commencing with Section 950) of, or the physician-patient
18 privilege of Article 6 (commencing with Section 990) of, Chapter
19 4 of Division 8 of the Evidence Code, or trade secret information.

20 *SEC. 6.5. Section 1102.5 of the Labor Code is amended to*
21 *read:*

22 1102.5. (a) ~~An employer may~~ employer, or any person acting
23 *on behalf of the employer, shall not make, adopt, or enforce any*
24 *rule, regulation, or policy preventing an employee from disclosing*
25 *information to a government or law enforcement agency, where*
26 *or to a person with authority over the employee or to another*
27 *employee who has authority to investigate, discover, or correct*
28 *the violation or noncompliance, or from providing information to,*
29 *or testifying before, any public body conducting an investigation,*
30 *hearing, or inquiry, if the employee has reasonable cause to believe*
31 *that the information discloses a violation of state or federal statute,*
32 *or a violation of or noncompliance with a—state local, state, or*
33 *federal rule or—regulation. regulation, regardless of whether*
34 *disclosing the information is part of the employee's job duties.*

35 (b) ~~An employer may~~ employer, or any person acting on behalf
36 *of the employer, shall not retaliate against an employee for*
37 *disclosing—information information, or because the employer*
38 *believes that the employee disclosed or may disclose information,*
39 *to a government or law enforcement agency, where or to a person*
40 *with authority over the employee or another employee who has*

1 *the authority to investigate, discover, or correct the violation or*
 2 *noncompliance, or for providing information to, or testifying*
 3 *before, any public body conducting an investigation, hearing, or*
 4 *inquiry, if the employee has reasonable cause to believe that the*
 5 *information discloses a violation of state or federal statute, or a*
 6 *violation of or noncompliance with a-state local, state, or federal*
 7 *rule or regulation- regulation, regardless of whether disclosing the*
 8 *information is part of the employee's job duties.*

9 (c) ~~An employer may~~ *employer, or any person acting on behalf*
 10 *of the employer, shall not retaliate against an employee for refusing*
 11 *to participate in an activity that would result in a violation of state*
 12 *or federal statute, or a violation of or noncompliance with a-state*
 13 *local, state, or federal rule or regulation.*

14 (d) ~~An employer may~~ *employer, or any person acting on behalf*
 15 *of the employer, shall not retaliate against an employee for having*
 16 *exercised his or her rights under subdivision (a), (b), or (c) in any*
 17 *former employment.*

18 (e) A report made by an employee of a government agency to
 19 his or her employer is a disclosure of information to a government
 20 or law enforcement agency pursuant to subdivisions (a) and (b).

21 (f) In addition to other penalties, an employer that is a
 22 corporation or limited liability company is liable for a civil penalty
 23 not exceeding ten thousand dollars (\$10,000) for each violation
 24 of this section.

25 (g) This section does not apply to rules, regulations, or policies
 26 ~~which~~ *that* implement, or to actions by employers against
 27 employees who violate, the confidentiality of the lawyer-client
 28 privilege of Article 3 (commencing with Section-950), 950) *of*, the
 29 physician-patient privilege of Article 6 (commencing with Section
 30 990)-~~of~~ *of*, Chapter 4 of Division 8 of the Evidence Code, or trade
 31 secret information.

32 ~~SEC. 6.~~

33 *SEC. 7.* Section 1103 of the Labor Code is amended to read:

34 1103. An employer or any other person or entity that violates
 35 this chapter is guilty of a misdemeanor punishable, in the case of
 36 an individual, by imprisonment in the county jail not to exceed
 37 one year or a fine not to exceed one thousand dollars (\$1,000) or
 38 both that fine and imprisonment, or, in the case of a corporation,
 39 by a fine not to exceed five thousand dollars (\$5,000).

1 *SEC. 8. The provisions of this act are severable. If any*
2 *provision of this act or its application is held invalid, that invalidity*
3 *shall not affect other provisions or applications that can be given*
4 *effect without the invalid provision or application.*

5 *SEC. 9. Section 6.5 of this bill incorporates amendments to*
6 *Section 1102.5 of the Labor Code proposed by both this bill and*
7 *Senate Bill 496. It shall only become operative if (1) both bills are*
8 *enacted and become effective on or before January 1, 2014, (2)*
9 *each bill amends Section 1102.5 of the Labor Code, and (3) this*
10 *bill is enacted after Senate Bill 496, in which case Section 6 of this*
11 *bill shall not become operative.*

12 ~~SEC. 7.~~

13 *SEC. 10. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*